

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated December 28, 2012, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and the members of its affiliated group to elect to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations, for the taxable year ending Date 3. The material information submitted for consideration is summarized below.

Prior to the transactions described below, Parent was the common parent of a consolidated group that filed its tax returns on the basis of a fiscal year ending on Date A (the "old Parent Group").

On Date 1, Parent acquired all of the outstanding common stock of Subsidiary 1 in exchange for Parent stock in a transaction constituting a reverse acquisition within the meaning of § 1.1502-75(d)(3), terminating the old Parent Group and creating a new affiliated group. Prior to this acquisition, Subsidiary 1 used a fiscal year ending on Date B. Subsidiary 1 did not join in the filing of a consolidated return prior to Date 1.

On Date 2, Parent acquired all of the outstanding common stock of Subsidiary 2 in exchange for cash.

An election for the new affiliated group to elect to file a consolidated Federal income tax return for the taxable year ending Date 3 (the "Election") was due on the last day prescribed by law (including extensions of time) for filing Parent's return (after taking into account the required change in the taxable year for Parent as a result of the reverse acquisition under § 1.1502-75(d)(3)(v)). However, for various reasons, a valid election was not made. Subsequently, this request was submitted, under penalties of perjury, for an extension of time to file the election.

Parent represents that it does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)) to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed no later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (*i.e.*, § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for the new Parent affiliated group to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and the Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make the Election, and that the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time under § 301.9100-1, until 45 days from the date on this letter, for Parent to file the Election, by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each subsidiary member for the taxable year ending Date 3. Parent must attach a copy of this letter to the return. Alternatively, if such return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement to the return that provides the date and control number (PLR-101426-13) of this letter ruling.

The above extension of time is conditioned on the new Parent affiliated group's tax liability, if any, not being lower in the aggregate for all years to which the Election applies than it would have been if the Election had been timely made (taking into account the time value of money). We express no opinion as to the new Parent

affiliated group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent and its subsidiaries qualify substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Internal Revenue Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in this letter.

For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made under penalties of perjury by Parent, Company Official, and Tax Professional. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: